

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

California Alliance for Utility Safety and  
Education,

Complainant,

vs.

San Diego Gas & Electric Company and the City  
of San Diego,

Defendants.

Case 04-12-012  
(Filed December 20, 2004)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

**Summary**

Pursuant to Rules 6(b)(3) and 6.3 of the Commission's Rules of Practice and Procedure,<sup>1</sup> this ruling sets forth the schedule, assigns a presiding officer, and addresses the scope of the proceeding, following a prehearing conference (PHC) held on March 22, 2005.

**Background**

Complainant California Alliance for Utility Safety and Education (CAUSE) filed its complaint on December 20, 2004, and filed an amended complaint on

---

<sup>1</sup> Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations, and citations to sections refer to the Public Utilities Code.

February 14, 2005. Defendants San Diego Gas & Electric Company (SDG&E) and the City of San Diego (City) filed their answers to the original complaint and amended complaint on February 17, 2005.<sup>2</sup> The City also filed a motion to dismiss the complaint as to it on February 17, 2005. This motion was granted by an Administrative Law Judge's (ALJ) Ruling Granting Motion to Dismiss on April 6, 2005.<sup>3</sup> The PHC was held in San Diego on March 22, 2005.

The complaint alleges that SDG&E violated state law and Commission general orders when, in a period during 2002 and 2003, it undergrounded a 138 kV transmission line along 29<sup>th</sup> Street and Dale Street, rather than, as originally announced, along 30<sup>th</sup> Street within the 30<sup>th</sup> Street Underground Utility District established by the City.<sup>4</sup>

CAUSE asserts that the change in the location of the undergrounding rendered the project ineligible for exemption from the requirements of the California Environmental Quality Act (CEQA), Pub. Res. Code § 21000 *et seq.*, as set forth in the CEQA Guidelines, § 15302(d).<sup>5</sup> As set out in the amended

---

<sup>2</sup> On April 1, 2005, SDG&E filed a Supplement to its answer, attaching a document requested by the Administrative Law Judge (ALJ) at the PHC.

<sup>3</sup> Because the City has been dismissed from this proceeding, the discussion below addresses only those allegations and responses relevant to SDG&E.

<sup>4</sup> The project will be referred to as the "30<sup>th</sup> street undergrounding project."

<sup>5</sup> Section 15302 provides that a project will be exempt from CEQA if the project

... consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to: ...

*Footnote continued on next page*

complaint, CAUSE also asserts that the undergrounding project has been improperly divided into phases, and should be considered as one project for CEQA purposes.

CAUSE claims that SDG&E failed to comply with General Order (GO) 131-D, which requires that public notice be given of certain transmission construction projects, including those projects not exempt from CEQA.

Finally, CAUSE alleges that SDG&E failed to take appropriate steps to mitigate emissions from electromagnetic fields (EMFs) in the undergrounding project.<sup>6</sup>

SDG&E, in its answer and supporting materials, responds that the project remains eligible for the CEQA exemption, regardless of where it is located and how it is phased. SDG&E also asserts that the project, being exempt from CEQA, is not subject to the notice requirements of GO 131-D; even if it were, the project has no adverse environmental impacts. Finally, SDG&E defends the steps it has taken to mitigate EMFs and argues that both legally and factually, it cannot be required to do more.

---

(d) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.

The CEQA Guidelines are found at 14 Cal. Code Reg., sec. 15000 *et seq.*

<sup>6</sup> CAUSE also alleged that SDG&E failed to use appropriate shielding for the underground cable as required by GO 128, but abandoned that claim at the PHC.

### **Scope of the Proceeding**

At the PHC, the parties agreed on the contours of legal and factual issues about the 30<sup>th</sup> Street undergrounding project that were in dispute. They also agreed that some facts were not disputed.

#### **Legal issues in dispute**

1. Is the 30<sup>th</sup> Street undergrounding project exempt from CEQA pursuant to CEQA Guidelines § 15302(d)?
2. Should the two announced phases of the 30<sup>th</sup> Street undergrounding project be considered one project?
3. Is the 30<sup>th</sup> Street undergrounding project subject to the notice requirements of GO 131-D, § XI.B?
4. Has SDG&E failed to comply with Decision 93-11-013 by failing to take appropriate steps to mitigate EMFs in its construction of the 30<sup>th</sup> Street undergrounding project?
5. What relief, if any, is now available to CAUSE?

#### **Factual issues in dispute**

1. What levels of EMF emission exist above the underground line on 29<sup>th</sup> and Dale Streets?
2. What steps can be taken now to reduce the EMF emission levels above the underground line on 29<sup>th</sup> and Dale Streets?
3. What is the cost of reducing the EMF emission levels above the underground line on 29<sup>th</sup> and Dale Streets?

**Factual issues not in dispute<sup>7</sup>**

1. The location of the transmission line already constructed for the 30<sup>th</sup> Street undergrounding project.
2. The dates the construction of the transmission line already completed for the 30<sup>th</sup> Street undergrounding project began and concluded, and the date the transmission line was energized.
3. The distribution and content of the letters sent by SDG&E notifying residents of impending construction on the 30<sup>th</sup> Street undergrounding project.
4. The details of construction of the transmission line, including the trenching, the cable configurations, and the location of the trench in the street.

The parties remain free to make agreements on any additional facts that are not in dispute. The parties are responsible for presenting at the evidentiary hearing (EH) all facts they believe to be necessary for a decision in this matter, whether by stipulation or by the introduction of documents or testimony. Parties shall follow the requirements set forth in the Appendix regarding prepared written testimony and exhibits. Prepared testimony is to be served on the parties and the ALJ, but not filed with the Docket Office.

**Discovery**

At the PHC, the parties agreed to exchange information informally and to respond promptly to any formal discovery requests. In view of the schedule for this proceeding, set forth below, it is important that any discovery disputes be resolved expeditiously. The parties must promptly meet and confer in a good

---

<sup>7</sup> At the PHC, the parties requested such a listing in the scoping memo.

faith effort to resolve any disputes. If that fails, any party may promptly file a written motion in accordance with Rule 45.

**Schedule**

The schedule set forth below was agreed to by the parties at the PHC. After the PHC, the parties requested the services of an ALJ not involved in this matter as a mediator. At the request of the parties, this schedule may be modified to accommodate mediation efforts.

Ongoing	Discovery and informal exchange of information
May 5, 2005	Concurrent testimony served on parties and ALJ
May 18, 2005	Concurrent rebuttal testimony served on parties and ALJ
May 25, 2005 9 a.m.	EH San Diego State Building, Room B-102, 1350 Front Street, San Diego, California.
May 26, 2005 9 a.m.	EH continued if necessary
To be determined at close of EH	Concurrent closing briefs and submission of case
60 days after submission	Presiding Officer's Decision

It is my goal to close this case within the 12-month statutory period for resolution of complaint proceedings and this schedule meets that goal. At this time, I foresee no extraordinary circumstances which would warrant an extension of the schedule. The presiding officer may, for good cause shown, alter this schedule within the 12-month timeframe.

### **Service**

Because the complainant's representative lacks access to reliable electronic mail service, service of documents in this proceeding shall be by U.S. mail until further notice.

### **Assignment of Presiding Officer**

ALJ Anne Simon will be the presiding officer.

**Ex Parte Rules**

In accordance with Rule 7(b), ex parte communications are prohibited in this adjudicatory proceeding.

**IT IS RULED** that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. The presiding officer will be Administrative Law Judge Simon.
4. This ruling confirms that this proceeding is an adjudicatory matter.
5. Ex parte communications are prohibited as set forth in Rule 7(b) of the Commission's Rules of Practice and Procedure.

Dated April 25, 2005, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown  
Assigned Commissioner



## APPENDIX A: EXHIBITS

### Preparation of Prepared Testimony

See Article 17 of the Commission’s Rules of Practice and Procedure for various requirements (Rule 68--need for subject index; Rule 70--exhibit size; etc.). For the purposes of ascertaining whether a subject index is required, include the individual pages of any attachment(s) in the total page count. A subject index should identify all such attachments, as well as the sections/subsections within the prepared testimony. Generally, prepared testimony should be bound with any attachments to it, unless size considerations warrant a different practice. Each attachment to prepared testimony shall be separately tabbed to facilitate reference.

#### Formatting requirements:

- 1) The ***upper right hand corner of the exhibit cover sheet should be blank for the ALJ’s exhibit stamp.*** (Rule 70.) This applies to prepared testimony as well as other exhibits—if there is insufficient room in the upper right hand corner for an exhibit stamp, prepare a cover sheet for the exhibit. If a party “premarks” an exhibit in ***any*** way, it should do so in the upper left hand corner of the cover sheet.
- 2) If any exhibit *provided to the ALJ in the hearing room* consists of more than one page, the pages shall be bound together or otherwise fixed in a secure fashion (e.g. brads, acco fasteners, velo binding). **Do not use a loose-leaf binder** for this purpose--if dropped, the pages may fall out.

### Service of Exhibits

One copy of all prepared written testimony should be served on the Assigned ALJ, all parties, and on the Assigned Commissioner’s office. Prepared testimony should **not** be filed with the Commission’s Docket Office.

### Corrections to Exhibits

Minor corrections: only minor corrections (for example, correcting the day in a date) to an exhibit may be made orally from the witness stand.

Major corrections: all corrections, other than minor corrections, shall be made in advance of hearings, in writing, in order to provide timely notice to the ALJ and other parties.

- 1) Corrections shall use “redline” format conventions which permit comparison of the original and revised text (i.e. line out or strikeover the original text being deleted; clearly indicate, in a readily distinguishable manner, the substitute or additional text).

- 2) Each corrected page should be marked with the word “revised” and the revision date.
- 3) Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. (Example: Exhibit 2-A is the first correction made to Exhibit 2.)

### Identification of Exhibits in the Hearing Room

Number of copies:

- 1) Prepared testimony: the sponsoring party should provide **one copy to the ALJ and one to the court reporter**, and have at least 3 copies available for distribution to parties present in the hearing room.
- 2) Other exhibits: the sponsoring party should provide **two copies to the ALJ and one to the court reporter**, and have at least 3 copies available for distribution to parties present in the hearing room. (This directive supercedes Rule 71.)
- 3) Confidential exhibits: at least one of the copies provided to the ALJ must be in an **unsealed envelope** measuring no more than 10” by 13”.

### Cross-examination With Exhibits

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness’ counsel before the witness takes the stand on the day the exhibit is to be introduced.

Exception: A party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness’ spontaneous reaction.

Confidential documents: If parties have agreed to consult prior to disclosure, as in the case of **confidential documents**, they shall do so before using the documents in cross-examination, unless a different procedure regarding confidential documents has been arranged in advance with the ALJ.

**(END OF APPENDIX A)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated April 25, 2005, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

\*\*\*\*\*

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.